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September 8, 2023

**Via CM/ECF:**

Hon. George C. Hanks, Jr.  
United States District Judge, SDTX  
515 Rusk Street, Room 5300  
Houston, TX 77002

**Re: Civil Action No. 4:23-cv-02371, *Good Sportsman Marketing, LLC*  
*v. Chen, et al.***

Honorable Judge Hanks, Jr.,

This firm represents Plaintiff Good Sportsman Marketing, LLC (“GSM”) in the above-referenced action. I write in response to counsel for Defendants’ letter to the Court requesting a pre-motion conference (Dkt. 19), dated August 24, 2023. Counsel for Defendants has received a copy of this communication via the Court’s ECF system.

Defendants’ letter asserts that it will seek dismissal of GSM’s claims on three bases: (1) that GSM’s copyright claims improperly expand into the realm of patent law, (2) that GSM has not sufficiently identified the elements of its trade dress, and (3) that GSM’s state law claims are preempted by the Copyright Act. Dkt 19, p. 1.

On the same day that Defendants submitted their letter to the Court requesting permission to file a motion to dismiss, they filed a Motion for Injunctive Relief, arguing that GSM is unlikely to succeed on the merits of its case. Dkts. 17, 18. Notably, Defendants seek injunctive relief from this court on the same, identical three bases on which they will seek dismissal of the case.<sup>1</sup> Compare Dkt. 19 with Dkt. 18 at 3-7. In other words, **Defendants’ Motion for Preliminary Injunction is actually Defendants’ 12(b)(6) motion disguised as a motion for preliminary injunction** and filed prior to the Court holding a pre-motion conference.

GSM’s response to Defendants’ motion for preliminary injunction will be filed on September 14, 2023 and will address each of Defendants’ bases for dismissal of the case. As will

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<sup>1</sup> Defendants’ request for injunctive relief is questionable, given that they have not asserted any claims against GSM.

be briefed in GSM's response, dismissal of this case would be improper, particularly in light of Defendants' clear copying of GSM's trade dress and consumer comments that both products "are obviously made by the exact same manufacturer." Dkt. 6, ¶¶ 61-63. Thus, GSM respectfully requests the Court to hold the pre-motion conference after briefing on the Motion for Preliminary Injunction is closed.

Respectfully,

A handwritten signature in blue ink, appearing to read "J. David Cabello", with a stylized flourish at the end.

J. David Cabello  
Cabello Hall Zinda, PLLC

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above document has been served on September 8, 2023, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per the Local Rules.

/s/ John Watkins

John Watkins

Paralegal